

**Notice of Allowability**

Application No.

09/945,376

Examiner

Anne R. Kubelik

Applicant(s)

ACEVEDO ET AL.

Art Unit

1638

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to response filed 9 February 2004.
2. ☒ The allowed claim(s) is/are 1-17.
3. ☒ The drawings filed on 31 August 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

*Examiner's Amendment*

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Claire Moxon on 11 March 2004.

IN THE TITLE:

[A PATHOGEN-ACTIVATED PLANT] THE PROMOTER OF A MAIZE MAJOR LATEX PROTEIN GENE AND METHODS OF USING IT [IN EXPRESSING] TO EXPRESS HETEROLOGOUS NUCLEIC ACIDS IN TRANSFORMED PLANTS

IN THE ABSTRACT:

The invention is drawn to the promoter of a major latex protein gene from maize, which is pathogen-activitated. The promoter can be used in methods of expressing a heterologous DNA sequence in plants. [Compositions and methods to aid in protecting plants from invading pathogenic organisms are provided. The compositions of the invention comprise a pathogen-activated promoter capable of driving expression of heterologous nucleic acids. The compositions find use in methods for reducing or eliminating damage to plants caused by plant pathogens. Methods of using the-pathogen-activated promoter to express heterologous nucleic acids in plants are provided. Transformed plants, plant cells, tissues, and seed comprising the

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gene and pathogen-activated promoter, which thereby have enhanced disease resistance am also provided.]

IN THE CLAIMS:

Claim 1 (Currently amended) An isolated nucleic acid molecule [having a nucleotide sequence for a promoter that is capable of initiating transcription in a plant cell, comprising the sequence set forth in] comprising SEQ ID NO:3.

Claim 5. (Currently amended) A method for [inducing expression of] expressing a heterologous nucleotide sequence in a plant, wherein said method [comprising] comprises transforming a plant cell with [a] the DNA construct of claim 2 [comprising said heterologous nucleotide sequence operably linked to a promoter that is capable of initiating transcription in a plant cell in response to a stimulus], and regenerating a stably transformed plant from said plant cell[, and exposing said plant to said stimulus, wherein said promoter comprises the sequence set forth in SEQ ID NO:3].

Claim 9. (Currently amended) A plant cell stably transformed with [a] the DNA construct of claim 2 [comprising a heterologous nucleotide sequence operably linked to a promoter that is capable of initiating transcription in said plant cell, wherein said promoter comprises the nucleotide sequence set forth in SEQ ID NO:3].

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Claim 13. (Currently amended) A plant stably transformed with [a] the DNA construct of claim 2 [comprising a heterologous nucleotide sequence operably linked to a promoter that is capable of initiating transcription in a plant cell, wherein said promoter comprises a the nucleotide sequence set forth in SEQ ID NO:3].

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (571) 272-0804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (571) 272-1600.

Anne R. Kubelik, Ph.D.

March 11, 2004



ANNE KUBELIK  
PATENT EXAMINER